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**BEFORE THE  
RESPIRATORY CARE BOARD  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

MICHAEL JOSEPH LAZZOPINA  
880 La Mirada Street  
Laguna Beach, CA 92651

Respiratory Care Practitioner License No. 2419

Respondent.

Case No. R-2082

OAH No. L2007070125

**SECOND AMENDED ACCUSATION**

Complainant alleges:

**PARTIES**

1. Stephanie Nunez (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs.

2. On or about May 17, 1985, the Respiratory Care Board issued Respiratory Care Practitioner License No. 2419 to MICHAEL JOSEPH LAZZOPINA (Respondent). The Respiratory Care Practitioner License was in full force and effect at all times relevant to the charges brought herein and will expire on October 31, 2008, unless renewed.

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## JURISDICTION

3. On or about June 7, 2007, Complainant filed an Accusation against Respondent. On or about August 7, 2007, Complainant filed a First Amended Accusation against Respondent. Complainant now brings this Second Amended Accusation before the Board under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 3710 of the Code states: “The Respiratory Care Board of California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3, the Respiratory Care Practice Act].”

5. Section 3718 of the Code states: “The board shall issue, deny, suspend, and revoke licenses to practice respiratory care as provided in this chapter.”

6. Section 3750 of the Code states:

“The board may order the denial, suspension or revocation of, or the imposition of probationary conditions upon, a license issued under this chapter, for any of the following causes:

“....”

“(d) Conviction of a crime that substantially relates to the qualifications, functions, or duties of a respiratory care practitioner. The record of conviction or a certified copy thereof shall be conclusive evidence of the conviction.

“....”

7. Section 3752 of the Code states:

“A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge of any offense which substantially relates to the qualifications, functions, or duties of a respiratory care practitioner is deemed to be a conviction within the meaning of this article. The board shall order the license suspended or revoked, or may decline to issue a license, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section

1 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to  
2 enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the  
3 accusation, information, or indictment.”

4 8. Section 3752.6 of the Code states:

5 “For purposes of Division 1.5 (commencing with Section 475), and this  
6 chapter, a crime involving sexual misconduct or attempted sexual misconduct,  
7 whether or not with a patient, shall be considered a crime substantially related to  
8 the qualifications, functions, or duties of a respiratory care practitioner.”

9 9. Section 3752.7 of the Code states:

10 “Notwithstanding Section 3750, any proposed decision or decision issued  
11 under this chapter in accordance with the procedures set forth in Chapter 5  
12 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the  
13 Government Code, that contains any finding of fact that the licensee or registrant  
14 engaged in any act of sexual contact, as defined in Section 729, with a patient, or  
15 has committed an act or been convicted of a sex offense as defined in Section  
16 44010 of the Education Code, shall contain an order of revocation. The  
17 revocation shall not be stayed by the administrative law judge. For purposes of  
18 this section, the patient shall no longer be considered a patient of the respiratory  
19 care practitioner when the order for respiratory procedures is terminated,  
20 discontinued, or not renewed by the prescribing physician and surgeon.”

21 10. Section 44010 of the Education Code provides that a “Sex Offense,”  
22 includes but is not limited to “Any offense defined in .... subdivision (a) or (d) of Section 647 of  
23 the Penal Code.”

24 11. Penal Code section 647, provides in pertinent part:

25 “Every person who commits any of the following acts is guilty of  
26 disorderly conduct, a misdemeanor:

27 “(a) Who solicits anyone to engage in or who engages in lewd or  
28 dissolute conduct in any public place or in any place open to the public or exposed

1 to public view.

2 “....”

3 12. California Code of Regulations (“CCR”), title 16, section 1399.370, states,  
4 in pertinent part:

5 “For the purposes of denial, suspension, or revocation of a license, a crime or act  
6 shall be considered to be substantially related to the qualifications, functions or duties of  
7 a respiratory care practitioner, if it evidences present or potential unfitness of a licensee to  
8 perform the functions authorized by his or her license or in a manner inconsistent with the  
9 public health, safety, or welfare. Such crimes or acts shall include but not be limited to  
10 those involving the following:

11 “(a) Violating or attempting to violate, directly or indirectly, or  
12 assisting or abetting the violation of or conspiring to violate any provision or term  
13 of the Act.

14 “....”

15 “(e) Conviction of a crime involving lewd conduct, prostitution or  
16 solicitation thereof, or pandering and/or indecent exposure, as defined by the  
17 Penal Code.

## 18 **COST RECOVERY**

19 13. Section 3753.5, subdivision (a), of the Code states:

20 "In any order issued in resolution of a disciplinary proceeding before the  
21 board, the board or the administrative law judge may direct any practitioner or  
22 applicant found to have committed a violation or violations of law to pay to the  
23 board a sum not to exceed the costs of the investigation and prosecution of the  
24 case."

25 14. Section 3753.7 of the Code states:

26 "For purposes of the Respiratory Care Practice Act, costs of prosecution shall  
27 include attorney general or other prosecuting attorney fees, expert witness fees, and other  
28 administrative, filing, and service fees."

1                   15.     Section 3753.1 of the Code states:

2                   "(a) An administrative disciplinary decision imposing terms of probation may  
3 include, among other things, a requirement that the licensee-probationer pay the monetary costs  
4 associated with monitoring the probation."

5                                   **CAUSE FOR DISCIPLINE**

6                                   **(Commission Of An Act Constituting A Sex Offense)**

7                   16.     Respondent's Respiratory Care Practitioner License No. 2419 is subject to  
8 disciplinary action under section 3752.7 of the Code in that he committed an act or acts as  
9 defined in section 44010 of the Education Code, and more particularly defined in Penal Code  
10 section 647, subdivision (a). The circumstances are as follows:

11                           A.     On or about August 20, 2004, Respondent was observed by  
12 Garden Grove Police Officer Salazar ("Officer Salazar") in a video booth, at an  
13 adult book store, watching a pornographic movie. There were no doors or roofs to  
14 these booths and anyone walking by could look directly into the booths. The  
15 pornographic movie was a clip of two males engaging in homosexual activity.  
16 Officer Salazar looked into the booth and saw Respondent's penis exposed.  
17 Respondent was gripping his penis with his hand and stroking it up and down.  
18 Officer Salazar placed Respondent under arrest. Respondent admitted to Officer  
19 Salazar he was aware that it was against the law to expose himself in a public  
20 place. Upon a search of Respondent, Officer Salazar found a bottle of Astroglide  
21 lubrication in Respondent's right front pocket. Respondent told Officer Salazar  
22 that he was playing with himself, and he brought the lubrication from home to use  
23 while masturbating.

24                           B.     On or about September 23, 2004, an Original Complaint  
25 was filed in Superior Court of California, County of Orange, West Justice Center,  
26 entitled *The People of the State of California v. Michael Joseph Lazzopina*, Case  
27 No. 04WM09728, charging Respondent with one count of violating Penal Code  
28 647(a) [engaging in lewd conduct].

1 C. On or about November 16, 2004, the Original Complaint  
2 was amended by interlineation to add Count 2 charging Respondent with violating  
3 Penal Code section 415(1) [making loud and unreasonable noises], and Count 1  
4 was dismissed. Respondent was convicted on his own guilty plea of violating  
5 Penal Code section 415(1), Count 2. As a result of the conviction, Respondent  
6 was placed on three years informal probation with terms and conditions.

7 **PRAYER**

8 WHEREFORE, Complainant requests that a hearing be held on the matters herein  
9 alleged, and that following the hearing, the Respiratory Care Board issue a decision:

10 1. Revoking Respiratory Care Practitioner License No. 2419, issued to  
11 MICHAEL JOSEPH LAZZOPINA;

12 2. Ordering Michael Joseph Lazzopina to pay the Respiratory Care Board the  
13 costs of the investigation and enforcement of this case, and if placed on probation, the costs of  
14 probation monitoring;

15 3. Taking such other and further action as deemed necessary and proper.

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17  
18 DATED: October 1, 2007  
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21 Original signed by Liane Zimmerman for:  
22 STEPHANIE NUNEZ  
23 Executive Officer  
24 Respiratory Care Board of California  
25 Department of Consumer Affairs  
26 State of California  
27 Complainant  
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